

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 22 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOHN BORODKIN,

Plaintiff - Appellant

v.

OMNI AIR INTERNATIONAL, INC., et
al.,

Defendants - Appellees

No. 06-17007

D.C. No. CV-05-01414-PMP/LRL

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Argued 27, 2008 Submitted May 5, 2008
Las Vegas, Nevada

Before: KOZINSKI, Chief Judge, BERZON and BYBEE, Circuit Judges

1. We affirm the district court's grant of summary judgment to Omni Air International, Inc. on the Nevada wrongful termination cause of action. Nevada's tortious discharge action is "severely limited to those rare and exceptional cases

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

where the employer's conduct violates strong and compelling public policy.” *Wayment v. Holmes*, 912 P.2d 816, 818 (Nev. 1996) (internal quotation marks omitted); *see also Chavez v. Sievers*, 43 P.3d 1022, 1026 (Nev. 2002). Nevada would not recognize a cause of action protecting an employee who has been terminated for failing an alcohol test that was not conducted strictly pursuant to the Federal Aviation Regulations; such a cause of action neither expresses Nevada policy nor protects public safety. The California case Borodkin cites, *Green v. Ralee Engineering Co.*, 960 P.2d 1046 (Cal. 1998), does not suggest otherwise. Unlike Nevada, California has a whistleblower statute that prohibits retaliation against an employee for disclosing a violation of state or federal regulations, and the whistleblower there was advancing the interest in public safety expressed in the Federal Aviation Act – not seeking to enforce a technical regulation protective of the individual privacy rights of employees. *Id.* at 1052.

2. We also affirm the district court's grant of summary judgment on the defamation cause of action. The Pilot Records Improvement Act (“PRIA”) prohibits actions against air carriers that have provided pilot records to a prospective employer if the pilot has signed a release of liability, which Borodkin did. *See* 49 U.S.C. § 44703(i)(1).

Borodkin alleges that his action comes within an exception for cases in which the air carrier (1) knew the information was false and (2) maintained it in violation of a federal criminal statute. *See* § 44703(i)(3). Borodkin has alleged that Omni knew the information was false, and that maintaining it was a violation of 18 U.S.C. § 1001, which prohibits, among other things, making false statements “in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.” § 1001(a)(1)-(3). Borodkin does not allege in his defamation claim that Omni provided false information to any branch of the United States government, but rather to another air carrier. The statute he identifies therefore does not apply. Because Borodkin has not identified any federal criminal statute that Omni violated in maintaining its records, Omni is entitled to summary judgment.

AFFIRMED.